IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 943 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAH SMITA SHANKARLAL
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR AD OZA for Petitioner.
MR HEMANT MAKWANA, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 15/11/2006

ORAL JUDGMENT

By filing this petition, the petitioner has prayed that appropriate direction may be given to the respondents to regularize her services on the post of lecturer in Accountancy with effect from the date of her initial

appointment. It is also prayed that she may be given benefits of annual increment, earned leave, vacation leave etc., as available to permanent employees.

This petition is pending before this Court since 1992. Initially, the petitioner was appointed as ad-hoc lecturer in a Government College at Ahwa as per the appointment order at page 16 dated 31-7-1987. The petitioner was given appointment on temporary basis upto the end of an academic year and her services can be terminated at any time. It is mentioned in the appointment order that in case any GPSC selected candidate is available or if anyone is transferred on such post, petitioner can be relieved from service. Thereafter, the services of the petitioner were continued on said post from time to time. According to the petitioner, prior to her appointment on the post in question, the petitioner was serving as a teacher in higher secondary school. It is also her case that even though nobody was willing to go to Ahwa, the petitioner has accepted to serve at Ahwa and since she has been continued on that post, now her services are required to be regularized. Since the petitioner was apprehending termination, she has filed this petition with a prayer that her services should be regularized.

Mr.Hemant Makwana, learned AGP submitted that in view of the judgement of Division Bench of this Court in **K.D.Vohra V. Kamleshbhai Gobarbhai Patel** reported in **2003 (2) GLR 1342,** the petitioner cannot be continued on said post as her appointment was on ad-hoc basis. He further submitted that in view of the directions given by this Honourable Court in Special Civil Application No.5415/1997, petitioner's services would be continued till GPSC selected candidate is available or any other employee is transferred from other department to the department where petitioner is serving. He further submitted that even if any occasion

arises for terminating the services of the petitioner, principle of 'last come first go' will be followed.

In response to the petition, affidavit-in-reply has been filed by Joint Director, Commissioner of Higher Education Office, Gandhinagar. In paragraph 5 of the affidavit, it is stated that the petitioner was appointed as ad-hoc lecturer in Government Commerce College, Gandhinagar and at present she is working in the same college, as no GPSC selected candidate is appointed vice her on the said post.

I have heard both the learned advocates and I have also gone through the decision of learned Single Judge delivered in Special Civil No.7604/1997 and allied matters dated 6-2-2006. I have also gone through the judgement of learned Single Judge delivered in in Special Civil Application No.5415/1997.

Considering the facts and circumstances of the case and considering aforesaid judgements, prayer of the petitioner to the effect that her services may be regularized cannot be granted, however, this petition is disposed of with following directions.

(i) Services of the petitioner may be continued till she is required to be replaced either by GPSC selected candidate or by any other suitable candidate by way of transfer.

(ii) In case the services of the petitioner are required to be terminated, then principle of 'last come first go' should be followed.

(iii) It is pointed out by Mr.Hathi, learned advocate for the petitioner

that some similarly situated lecturers have already been sent to private granted colleges. If that be so and if Government has evolved any policy to send such lecturers in private granted college, case of the petitioner also may be considered, however, it is for the Government to consider whether petitioner can be sent in a private granted college as a lecturer and this question is left to the discretion of the Government.

(iv) As per the judgement of the Division Bench, the Government shall consider to form a separate cadre and, thereafter, the Government may also consider whether the petitioner can be accommodated in such cadre in light of the directions given by Division Bench of this Court.

(v) In case it is not possible to accommodate the petitioner, as a lecturer, as per the aforesaid directions, then in view of averment made in paragraph 3 of Sur-Rejoinder filed by Joint Director, Commissioner of Higher Education Office, Gandhinagar the petitioner can be sent back to her original post in a Government School.

Mr.Makwana, learned AGP, after taking instructions from the officer, who is present in the Court, states that in case of aforesaid eventuality, appropriate action will be taken in that regard.

In view of aforesaid directions, this petition is partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar, J.)

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